

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 19, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHERRY W.,<sup>1</sup>

Plaintiff,

v.

FRANK BISIGNANO,  
Commissioner of Social Security,<sup>2</sup>

Defendant.

No. 2:24-CV-00403-EFS

**ORDER REVERSING THE ALJ'S  
DENIAL OF BENEFITS, AND  
REMANDING FOR PAYMENT OF  
BENEFITS**

<sup>1</sup> For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

<sup>2</sup> Frank Bisignano was confirmed as the Commissioner of Social Security on May 6, 2025. Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), he is hereby substituted as the Defendant.

1 Due to insulin-dependent diabetes mellitus; diabetic peripheral  
2 neuropathy; non-proliferative diabetic retinopathy without macular  
3 edema; cataracts; myopia, astigmatism, presbyopia; obesity; stage 3B  
4 chronic kidney disease; chronic headaches; lumbar degenerative disc  
5 disease; major depressive disorder; generalized anxiety disorder; and  
6 post-traumatic stress disorder (PTSD), Plaintiff Sherry W. claims she  
7 is unable to work fulltime and applied for social-security benefits. She  
8 appeals the denial of benefits by the Administrative Law Judge (ALJ)  
9 on the grounds that the ALJ improperly analyzed whether Plaintiff  
10 met or equaled the listings, improperly assessed Plaintiff's subjective  
11 claims, and improperly evaluated the medical opinions. As is explained  
12 below, the ALJ erred. This matter is remanded for payment of benefits.

15 **I. Background**

16 In 2019, Plaintiff filed applications for benefits under Title 2 and  
17 Title 16, claiming disability beginning June 7, 2019,<sup>3</sup> based on the  
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21 <sup>3</sup> Plaintiff initially alleged an onset date of November 20, 2018, but later  
22 amended her onset date to the date of filing. AR 73.

1 physical and mental impairments noted above.<sup>4</sup> Plaintiff's claims were  
2 denied at the initial and reconsideration levels.<sup>5</sup>

3 After the agency denied Plaintiff benefits, ALJ Lori Freund held a  
4 telephone hearing in February 2021, at which Plaintiff and a  
5 vocational expert testified.<sup>6</sup> On September 8, 2021, the ALJ issued an  
6 unfavorable decision denying Plaintiff's claims.<sup>7</sup> Plaintiff appealed, and  
7 on January 24, 2023, the Appeals Council remanded the case back to  
8 the ALJ for further proceedings.<sup>8</sup>

9 On August 23, 2023, the ALJ held a telephone hearing.<sup>9</sup>  
10 Plaintiff's counsel and a vocational expert attended the hearing, but  
11 Plaintiff did not answer her phone to appear.<sup>10</sup> Plaintiff was served a  
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15 <sup>4</sup> AR 479, 510, 553.

16 <sup>5</sup> AR 261, 269, 272.

17 <sup>6</sup> AR 68-102.

18 <sup>7</sup> AR 228-253.

19 <sup>8</sup> AR 254-260.

20 <sup>9</sup> AR 102-121.

21 <sup>10</sup> *Id.*

1 Notice to Show Cause and responded that her phone was not working  
2 on the day of the hearing and she tried to contact the hearing office but  
3 could not.<sup>11</sup> On January 11, 2024, the ALJ held a supplemental  
4 telephone hearing.<sup>12</sup> Plaintiff appeared with her attorney, and Plaintiff  
5 and a vocational expert testified.<sup>13</sup>  
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7 Plaintiff testified that she had been advised to attend aquatic  
8 physical therapy by a neurologist but she was uncomfortable with the  
9 neurologist.<sup>14</sup> Her primary doctor told her to attend an EMG instead  
10 but her insurance would not cover the EMG.<sup>15</sup> She said she was taking  
11 gabapentin and a muscle relaxer for back pain, was taking insulin and  
12 Victoza for her diabetes, paroxetine for depression, amlodipine and  
13 levothyroxine for her thyroid, and losartan for blood pressure.<sup>16</sup> She  
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17 <sup>11</sup> AR 437-439, 440.  
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<sup>12</sup> AR 122-173.  
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<sup>13</sup> *Id.*  
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<sup>14</sup> AR 132.  
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<sup>15</sup> AR 133-134.  
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<sup>16</sup> AR 135.  
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1 said she had gained weight.<sup>17</sup> Her main problems are with her back  
2 and kidneys, and she has pain that goes into her left leg, as well as  
3 numbness.<sup>18</sup>

4 Plaintiff testified that she had used a cane for some time but her  
5 legs started shaking more and she would fall, so she now uses a walker  
6 more often.<sup>19</sup> She uses the walker both in and out of the house.<sup>20</sup> She  
7 said the doctor who prescribed the walker wondered why she used a  
8 cane at all and she said she did so to try to strengthen her legs.<sup>21</sup> She  
9 said she hurt her shoulder when she fell at the mall.<sup>22</sup>

10 Plaintiff said she has issues with vision, but her insurance was  
11 not accepted by doctors and that she was told she could not drive  
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16 <sup>17</sup> AR 137.

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18 <sup>18</sup> AR 137-138.

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20 <sup>19</sup> AR 138.

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22 <sup>20</sup> AR 138-139.

<sup>21</sup> AR 139.

<sup>22</sup> Ar 140.

1 unless her vision improved.<sup>23</sup> She said she is also limited from driving  
2 due to slow reflexes.<sup>24</sup>

3 After the hearing, the ALJ issued a decision denying benefits.<sup>25</sup>  
4 The ALJ found Plaintiff's alleged symptoms were not entirely  
5 consistent with the medical evidence and the other evidence.<sup>26</sup> As to  
6 medical opinions: the ALJ found:

- 8 • The opinions of state agency evaluators Norman Staley,  
9 MD, and Howard Platter, MD, to be partially persuasive.
- 10 • The opinions of medical expert W. Benton Boone, MD, to be  
11 persuasive.
- 12 • The opinions of treating provider Jonathan Haymore, MD,  
13 to be somewhat persuasive.

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18<sup>23</sup> AR 142-143.

19<sup>24</sup> AR 145.

20<sup>25</sup> AR 25-60. Per 20 C.F.R. §§ 404.1520(a)-(g), a five-step evaluation  
21 determines whether a claimant is disabled.

22<sup>26</sup> AR 44.

- The opinions of treating provider Jaime Valentino, ARNP, to be not persuasive.
- The opinions of reviewing evaluator Brent Packer, MD, to be not persuasive.
- The opinions of treating source Lich Pham, MD, to be not persuasive.
- The opinions of consultative examiner Rebecca Alexander, PhD, and reviewing evaluator Dr. Michael Jenkins-Guarnieri to be somewhat persuasive.
- The opinions of examining source Kayleen Islaw-Zwart, PhD, to be not persuasive.
- The opinions of state agency evaluators Beth Fitterer, PhD, and Carol Moore, PhD, to be partially persuasive.<sup>27</sup>

The ALJ also considered the third-party statement of Plaintiff's boyfriend and found it not consistent with the medical record.<sup>28</sup> As to the sequential disability analysis, the ALJ found:

27 AR 45-50.

28 AR 44

- Plaintiff met the insured status requirements through December 31, 2024.
- Step one: Plaintiff had not engaged in substantial gainful activity since June 7, 2019, the alleged onset date.
- Step two: Plaintiff had the following medically determinable severe impairments: diabetes mellitus; diabetic peripheral neuropathy; non-proliferative diabetic retinopathy without macular edema; cataracts; myopia, astigmatism, presbyopia; obesity; chronic kidney disease; chronic headaches; lumbar degenerative disc disease; major depressive disorder; generalized anxiety disorder; and PTSD.
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments and considered listings 1.15, 1.16, 2.02, 6.05, 11.14, 11.12, 12.14, 12.06, and 12.15.
- RFC: Plaintiff had the RFC to perform light work with the following exceptions:

[Plaintiff] can lift up to ten pounds frequently and 20 pounds occasionally. She can stand and walk for up to six hours in an eight-hour workday. She can sit for at least six hours in an eight-hour workday. She would likely need a sit/stand option allowing for brief changes in positioning that should not interfere with productivity. She would need to avoid all ladders, ropes, and scaffolds. She can occasionally climb ramps and stairs. She can occasionally balance, stoop, kneel, crouch, and crawl. She would need to avoid all unprotected heights and working around hazards and hazardous machinery. She should avoid the operational control of moving machinery and working around any type of machinery with moving mechanical parts. She is capable of simple and repetitive tasks with some detail but nothing complex. She is capable of handling occasional changes in a work setting. She can have occasional interaction with coworkers and supervisors. She can have occasional, superficial interaction with the general public. She would need to avoid tasks that would involve fine vision (meaning handling very small items such as a circuit board or something that would require very acute vision/hand eye coordination). She would be capable of using a computer if able to adjust the font size. She can occasionally read for purposes of specific tasks involved in a job..

- Step four: Plaintiff was not capable of performing past relevant work as a sales clerk and child monitor.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in

1 significant numbers in the national economy, such as  
2 routing clerk (DOT 222.587-038), small products assembler  
3 (DOT 706.684-022), and an office helper (DOT 239.567-  
4 010).<sup>29</sup>

5 Plaintiff timely requested review of the ALJ's decision by the  
6 Appeals Council and now this Court.<sup>30</sup>

## 8 II. Standard of Review

9 The ALJ's decision is reversed "only if it is not supported by  
10 substantial evidence or is based on legal error,"<sup>31</sup> and such error  
11 impacted the nondisability determination.<sup>32</sup> Substantial evidence is  
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14 <sup>29</sup> AR 31-51.

15 <sup>30</sup> AR 1-7; ECF No. 1.

16 <sup>31</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. §  
17 405(g);

18 <sup>32</sup> *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) ), superseded  
19 on other grounds by 20 C.F.R. § 416.920(a) (recognizing that the court  
20 may not reverse an ALJ decision due to a harmless error—one that "is  
21 inconsequential to the ultimate nondisability determination").

1 “more than a mere scintilla but less than a preponderance; it is such  
2 relevant evidence as a reasonable mind might accept as adequate to  
3 support a conclusion.”<sup>33</sup>

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### 5 III. Analysis

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7 Plaintiff initially argued the ALJ erred in her evaluation of  
8 Listings 6.05, 6.03, and 1.15; erred by not properly evaluating  
9 Plaintiff’s testimony; and erred by not properly assessing the medical  
10 opinions.<sup>34</sup> The Commissioner argues that the ALJ properly evaluated  
11 Listings 6.05 and 6.03, properly evaluated Plaintiff’s testimony. and

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13 <sup>33</sup> *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978,  
14 980 (9th Cir. 1997)). *See also Lingenfelter v. Astrue*, 504 F.3d 1028,  
15 1035 (9th Cir. 2007) (The court “must consider the entire record as a  
16 whole, weighing both the evidence that supports and the evidence that  
17 detracts from the Commissioner’s conclusion,” not simply the evidence  
18 cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d  
19 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does  
20 not indicate that such evidence was not considered[.]”).

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22 <sup>34</sup> ECF No. 8.

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properly considered the medical opinions.<sup>35</sup> In Plaintiff's Reply, she argues that the Commissioner waived any argument as to the ALJ's consideration of Listing 1.15 because he did not address that issue in his brief. The Court concludes that it need not address whether the Commissioner waived argument as to Listing 1.15 because the record establishes that Plaintiff met her burden in establishing that she met or equaled that listing. As is explained below, the ALJ's analysis contains consequential error, and the case should be remanded for an award of benefits from October 10, 2022.

**A. Step Three: Plaintiff established consequential error.**

Plaintiff contends the ALJ failed to provide substantial evidence to support the finding that Plaintiff did not meet Listing 1.15. The Court agrees.

1. Standard

The Listings set forth by the Commissioner "define impairments that would prevent an adult, regardless of his age, education, or work experience, from performing *any* gainful activity, not just 'substantial

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<sup>35</sup> ECF No. 9.

1 gainful activity.<sup>36</sup> At step three of the sequential evaluation, Plaintiff  
2 bears the burden of demonstrating that her impairment meets or  
3 equals a Listing.<sup>37</sup>

4       If a claimant meets all of the listing criteria, she is considered  
5 disabled at step-three. A claimant who does not meet the listing  
6 criteria may still be considered disabled at step-three if her  
7 impairment(s) medically equal a listed impairment.<sup>38</sup> Medical  
8 equivalence can be established three ways, one of which is:

9       If an individual has an impairment that is described in the  
10 listings, but either:

11

12       a. the individual does not exhibit one or more of the  
13            findings specified in the particular listing, or  
14       b. the individual exhibits all of the findings, but one or  
15            more of the findings is not as severe as specified in the  
16            particular listing,

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17       <sup>36</sup> *Sullivan v. Zebley*, 493 U.S. 521, 532 (1990) (citations omitted).

18       <sup>37</sup> *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

19       <sup>38</sup> Soc. Sec. Ruling 17-2p. *See also Sullivan v. Zebley*, 493 U.S. 521, 530  
20 (1990) (requiring a claimant to show that the impairment meets (or  
21 medically equals) all of the specified medical criteria, not just some of  
22 the criteria).

1 then we will find that his or her impairment is medically  
2 equivalent to that listing if there are other findings related  
3 to the impairment that are at least of equal medical  
4 significance to the required criteria.<sup>39</sup>

5 The ALJ is obligated to consider the relevant evidence to  
6 determine whether a claimant's impairments meet or equal one of the  
7 specified impairments set forth in the listings.<sup>40</sup> Generally, a  
8 "boilerplate finding is insufficient to support a conclusion that a  
9 claimant's impairment does not [meet or equal a listing]."<sup>41</sup>

10 Listing 1.15 provides:

11 **1.15 Disorders of the skeletal spine resulting in**  
12 **compromise of a nerve root(s)** (see 1.00F), documented  
13 by A, B, C, and D:

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16 <sup>39</sup> *Id.*

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18 <sup>40</sup> *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir.2001); 20 C.F.R. §  
19 416.920(a)(4)(iii).

20 <sup>41</sup> *Lewis*, 236 F.3d at 512; *see also Marcia v. Sullivan*, 900 F.2d 172, 176  
21 (9th Cir.1990) (noting that the ALJ's unexplained finding at step three  
22 was reversible error).

1           **A.** Neuro-anatomic (radicular) distribution of one or more  
2           of the following *symptoms* consistent with compromise of  
the affected nerve root(s):

3           1. Pain; or  
4           2. Paresthesia; or  
5           3. Muscle fatigue.

6           AND

7           **B.** Radicular distribution of neurological *signs* present  
8           during physical examination (see 1.00C2) or on a  
diagnostic test (see 1.00C3) and evidenced by 1, 2, and  
either 3 or 4:

9           1. Muscle weakness; and  
10          2. Sign(s) of nerve root irritation, tension, or  
compression, consistent with compromise of the  
affected nerve root (see 1.00F2); and  
11          3. Sensory changes evidenced by:  
12            a. Decreased sensation; or  
13            b. Sensory nerve deficit (abnormal sensory  
nerve latency) on electrodiagnostic testing; or  
14          4. Decreased deep tendon reflexes.

15           AND

16           **C.** Findings on imaging (see 1.00C3) consistent with  
17           compromise of a nerve root(s) in the cervical or  
lumbosacral spine.

18           AND

19           **D.** Impairment-related physical limitation of  
20           musculoskeletal functioning that has lasted, or is expected  
to last, for a continuous period of at least 12 months, and  
21           medical documentation of at least *one* of the following:

22           1. A documented medical need (see 1.00C6a) for a  
walker, bilateral canes, or bilateral crutches

1 (see 1.00C6d) or a wheeled and seated mobility device  
2 involving the use of both hands (see 1.00C6e(i)).  
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4 2. The ALJ's consideration of Listing 1.15  
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6 The ALJ articulated her consideration of Listing 1.15 as follows:  
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8 Listings 1.15 and 1.16 have been considered regarding the  
9 claimant's spinal impairment, but neither has been met. As  
10 for listing 1.15, there is no evidence that the nerve roots  
11 have been compromised in a manner causing radicular  
12 symptoms of pain, paresthesia, or muscle fatigue along with  
13 signs of muscle weakness and irritation, tension, or  
14 compression. At least one of the aforementioned signs and  
15 one of the aforementioned symptoms must be present, in  
addition to either the requisite sensory changes or  
decreased deep tendon reflexes. Such findings must be  
established by imaging results and must have lasted, or be  
expected to last, for at least 12 continuous months, and  
there must be medical documentation of the need for an  
assistive device requiring either the use of both hands  
and/or an inability to use one upper extremity for  
workrelated activities, combined with the use of an assistive  
device in the other upper extremity.<sup>42</sup>

16 She went on to note further that:  
17

18 There is no evidence that the claimant medically requires  
19 an assistive device that involves the use of both hands, nor  
20 is there evidence that the claimant has an inability to use  
21 one upper extremity and requires an assistive device using  
22 the other upper extremity as described in 1.00E4 and  
23 1.00C6. The claimant has also not satisfied the alternative

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42 AR 32-33.

1 requirements of listing 1.15D(3), with an inability to use  
2 both upper extremities for fine and gross movements as  
3 outlined in 1.00E4.<sup>43</sup>

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5 3. Relevant Medical Evidence

6 On March 24, 2022, Plaintiff presented to Patrick Magajna, MD,  
7 of the emergency room (ER) of Providence Holy Family Hospital with  
8 complaints that she had fallen that day when walking and reported  
9 that for the last 6 months she had a burning numbness in her leg.<sup>44</sup>  
10 Plaintiff suffered contusions to her right shoulder and arm due to the  
11 fall.<sup>45</sup> Plaintiff was advised to take pain medication, consult with her  
12 primary physician, and use a cane due to the instability in her leg.<sup>46</sup>

13 On July 5, 2022, Plaintiff presented to her treating physician,  
14 Lich Pham, MD, for an unrelated issue and he noted that Plaintiff has  
15 pain numbness or tingling in her left leg and ambulates with a cane.<sup>47</sup>

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17 <sup>43</sup> AR 33.

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19 <sup>44</sup> AR 1823.

20 <sup>45</sup> AR 1824.

21 <sup>46</sup> AR 1826.

22 <sup>47</sup> AR 1633.

1 On July 19, 2022, Plaintiff presented to Cal Leonard Smith, MD,  
2 of the ER of Providence Holy Family Hospital with complaints of left  
3 leg swelling and pain.<sup>48</sup> Plaintiff reported a burning pain radiating into  
4 her left, trouble moving her foot and toes, and drop foot when  
5 walking.<sup>49</sup> It was noted that she suffered from diabetes and peripheral  
6 neuropathy and had increased her dosage of gabapentin without any  
7 relief.<sup>50</sup> On examination, Plaintiff had significantly diminished  
8 strength in her left ankle and toe, with 2/5 strength in dorsal and  
9 plantar flexion, as opposed to 5/5 strength on the right.<sup>51</sup> Additionally,  
10 Dr. Smith noted that sensation was diminished to light touch  
11 circumferentially on the left compared to the right lower extremity.<sup>52</sup>  
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17 <sup>48</sup> AR 1815.

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19 <sup>49</sup> *Id.*

20 <sup>50</sup> *Id.*

21 <sup>51</sup> AR 1816.

22 <sup>52</sup> *Id.*

1 Dr. Smith also noted tenderness along the left paraspinous  
2 musculature.<sup>53</sup>

3 On the same day, an MRI of the lumbar was performed at  
4 Community Health Center of Spokane.<sup>54</sup> It was noted that Plaintiff had  
5 suffered low back pain with progressive neurologic deficits, left foot  
6 weakness with pain radiating from the left hip to ankle, and significant  
7 weakness in dorsal and plantar flexion on the left ankle.<sup>55</sup>

8 Findings at the lumbar disc levels were as follows:

9  
10 L1-2. No significant disc bulge or herniation. No significant  
11 central canal or foraminal stenosis. L2-3: posterior disc bulge  
12 and mild facet joint arthrosis as well as mild hypertrophy of  
13 the ligamentum flavum. No significant central canal or  
14 foraminal stenosis. L3-4 Diffuse posterior disc bulge slightly  
15 more marked broad basket far laterally along the left neural  
16 foramen with moderate facet joint arthrosis and hypertrophy  
17 of the ligamentum flavum resulting in mild-to-moderate  
18 central canal stenosis and mild left neural foraminal  
stenosis. No significant right neural foraminal stenosis. L4-  
19 5: Diffuse disc bulge with moderate facet joint arthrosis and  
20 hypertrophy of the ligamentum flavum causing moderate  
21 central canal and moderate bilateral left greater than right  
22 foraminal stenosis. L5-S1: Mild epidural lipomatosis at this

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23  
24 <sup>53</sup> *Id.*

25 <sup>54</sup> AR 1657.

26 <sup>55</sup> *Id.*

1 level. Diffuse mild posterior disc bulge and moderate facet  
2 joint arthrosis and hypertrophy of the ligamentum flavum.  
3 There is a 1.3 x 08 cm synovial cyst along the right facet joint  
4 that extends into the spinal canal and compresses the  
adjacent nerve roots. It abuts the right S1 nerve root in the  
right lateral recess. No significant foraminal stenosis.<sup>56</sup>

5 The overall impression was:

6 1.3 x 0.9 cm synovial cyst along the right facet pint at LS-S1  
7 that extends into the spinal canal and compresses the  
8 adjacent nerve roots. It abuts the right S1 nerve root in the  
right lateral recess. Multilevel disc and facet joint  
9 degenerative changes in the lumbar spine as described above  
10 with varying levels of central canal and foraminal stenosis at  
11 L3-4 and L4-5 as described above.<sup>57</sup> Dr. Pham completed a  
form recommending that Plaintiff be given a handicapped  
placard.<sup>58</sup>

12 On September 29, 2022, Plaintiff presented to Dr. Pham, who  
13 noted that Plaintiff complained of left leg and foot pain, right flank  
14 pain, and numbness in her left foot.<sup>59</sup> Plaintiff's legs were mildly  
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19 <sup>56</sup> AR 1657-1658.

20 <sup>57</sup> AR 1658.

21 <sup>58</sup> *Id.*

22 <sup>59</sup> AR 1625.

1 erythematous without cellulitis but with a sensation of pins and  
2 needles in her left foot.<sup>60</sup>

3       On October 10, 2022, Plaintiff contacted Dr. Pham's office, and  
4 reported that she had fallen twice over the weekend and had injured  
5 her left knee and thought she needed a better cane or a walker to help  
6 her balance.<sup>61</sup> That afternoon Plaintiff was examined by Dr. Pham,  
7 who noted that her left leg was mildly erythematous without cellulitis  
8 but with a sensation of pins and needles in her left foot.<sup>62</sup> Dr. Pham  
9 increased Plaintiff's gabapentin and prescribed a four-wheeled  
10 walker.<sup>63</sup>

12       4. Analysis

13       The ALJ's articulated reasoning regarding Listing 1.15 is not  
14 supported by substantial evidence. Here, the ALJ gave two reasons for  
15 finding that Plaintiff did not meet or equal Listing 1.15. She reasoned  
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18       <sup>60</sup> AR 1627.

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20       <sup>61</sup> AR 1612.

21       <sup>62</sup> AR 1616.

22       <sup>63</sup> AR 1617.

1 that 1) there was no evidence of nerve root compromise showing pain,  
2 paresthesia, sensory changes, or decreased deep tendon reflexes, and 2)  
3 that there was no evidence that Plaintiff required an assistive device  
4 which required both hands.  
5

6 The ALJ is incorrect as to each of these findings. First, the July  
7 2022 MRI clearly indicated that there was diffuse mild posterior disc  
8 bulge and moderate facet joint arthrosis and hypertrophy of the  
9 ligamentum flavum, as well as a synovial cyst along the right facet  
10 joint that extended into the spinal canal and compressed the adjacent  
11 nerve roots.<sup>64</sup> There was not a doubt that there was compromise of a  
12 nerve root.  
13

14 As to the requisite showing that there was sign of muscle  
15 weakness, pain, paresthesia, or sensory changes, the evidence again  
16 clearly establishes the presence of those symptoms. Plaintiff reported  
17 burning numbness in her leg in early July.<sup>65</sup> Two weeks later, when  
18 Plaintiff presented to the ER after a fall, it was noted that she reported  
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21 <sup>64</sup> AR 1657-1658.  
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23 <sup>65</sup> AR 1823.

1 a burning pain radiating into her left leg, trouble moving her foot and  
2 toes, and drop foot when walking.<sup>66</sup> On examination, Plaintiff had  
3 significantly diminished strength in her left ankle and toe, with 2/5  
4 strength in dorsal and plantar flexion, as well as diminished  
5 sensation.<sup>67</sup>  
6

7 By the time Plaintiff was examined in October 2022 and  
8 prescribed a walker by Dr. Pham, Plaintiff's numbness and tingling in  
9 her leg and foot had not subsided and had in fact gotten worse.<sup>68</sup>  
10 Between March 2022 and October 2022, Plaintiff had suffered several  
11 falls because of her difficulty with her left leg and dragging foot.<sup>69</sup>  
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13 Elsewhere in the decision, the ALJ addressed the Plaintiff's  
14 prescription for a walker and stated, “[Plaintiff] reported that she uses  
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19<sup>66</sup> *Id.*

20<sup>67</sup> *Id.*

21<sup>68</sup> AR 1625.

22<sup>69</sup> AR 1612, 1657, 1824, 1815.  
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1 a walker or a cane for ambulation at all times, and she was prescribed  
2 a walker at her request (Exhibit 19F/47, 52, 123)."<sup>70</sup>

3 This statement is a mischaracterization. The medical records  
4 indicates that on October 10, 2022, Plaintiff contacted her doctor's  
5 office to advise that she had fallen twice in two days despite the use of  
6 a cane and thought she might need a better cane or a walker.<sup>71</sup> The  
7 doctor examined her later that day and opined that she should be using  
8 a walker rather than a cane.<sup>72</sup> It was Plaintiff's testimony that when  
9 he examined her, Dr. Pham stated that she should have been using a  
10 walker and not a cane since her ER admission.<sup>73</sup> The record  
11 establishes that Plaintiff suffered a number of falls even after being  
12 prescribed a cane and there is no reason to think that Dr. Pham's  
13 prescription for a walker was unreasonable.

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<sup>70</sup> AR 44.

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20<sup>71</sup> AR 1612.

21<sup>72</sup> AR 1617.

22<sup>73</sup> AR 139.

1 The ALJ offered no conflicting opinion or evidence that would  
2 indicate that Dr. Pham's prescription for a walker was not a reasonable  
3 medical decision. She offered no evidence that Dr. Pham did not make  
4 his decision to prescribe a walker based on anything other than his  
5 own reasonable medical judgement after examining Plaintiff, along  
6 with Plaintiff's advisement that she had fallen twice in a weekend  
7 despite using a cane.

9 The Court concludes that had the ALJ properly considered  
10 evidence of nerve root compromise, documented muscle weakness in  
11 the left leg and foot, documented loss of sensation in the left leg and  
12 foot, and a valid prescription for a two-handed assistive device, she  
13 would have found Plaintiff to meet or equal Listing 1.15.  
14 Accordingly, the Court finds that remand is warranted for an award of  
15 benefits from October 10, 2022, the date on which it was determined by  
16 Plaintiff's medical sources that she required use of a walker to  
17 ambulate effectively.

18  
19 **IV. Conclusion**  
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21 Remand for further administrative proceedings is the usual  
22 course when a harmful error occurs in the administrative proceeding,  
23

1 except in rare circumstances.<sup>74</sup> This is a rare circumstance where an  
2 award of benefits is appropriate.

3       First, the ALJ failed to provide legally sufficient reasons for  
4 rejecting the medical evidence showing symptoms of muscle weakness,  
5 paresthesia, and loss of sensation resulting from nerve root  
6 compression at the L5-S1 level, which caused Plaintiff to fall and  
7 require the use of a walker to ambulate no later than October 10, 2022.

8       Second, further administrative proceedings will offer no  
9 benefit—the record is fully developed.<sup>75</sup> “Allowing the Commissioner to  
10 decide the issue again would create an unfair ‘heads we win; tails, let’s  
11 play again’ system of disability benefits adjudication.”<sup>76</sup>

12       An award of benefits is warranted. Accordingly, **IT IS HEREBY**  
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**ORDERED:**

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<sup>74</sup> *Treichler v. Comm’r of Social Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014) (quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)).

<sup>75</sup> *See id.*

<sup>76</sup> *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004).

1. The ALJ's nondisability decision is **REVERSED**, and this
- 2 matter is **REMANDED** to the Commissioner of Social
- 3 Security for a calculation of benefits pursuant to sentence
- 4 four of 42 U.S.C. § 405(g).
- 5
6. The Clerk's Office shall **TERM** the parties' briefs, **ECF**
- 7 **Nos. 8 and 91**, enter **JUDGMENT** in favor of **Plaintiff**,
- 8 and **CLOSE** the case.

9 IT IS SO ORDERED. The Clerk's Office is directed to file this  
10 order and provide copies to all counsel.

11 DATED this 19<sup>th</sup> day of May, 2025.

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EDWARD F. SHEA  
Senior United States District Judge  
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